

AMENDED IN SENATE JUNE 6, 2011

SENATE BILL

No. 783

Introduced by Senator Dutton

February 18, 2011

~~An act to amend Section 21065 of the Public Resources Code, relating to the environment. An act to add Sections 55.4 and 55.41 to the Civil Code, and to amend Section 4452 of the Government Code, relating to special access, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 783, as amended, Dutton. ~~Environment: CEQA.~~ *Special access: liability.*

Under existing law, a person, firm, or corporation that interferes with the access rights of a disabled individual is liable for the actual damages of each offense and any amount determined by a judge or jury of up to 3 times the amount of the actual damages, but in no case less than \$1,000. Existing law requires the State Architect to develop and submit for approval and adoption building standards for making buildings, structures, sidewalks, curbs, and related facilities accessible to, and usable by, persons with disabilities, as specified.

This bill would establish notice requirements for an alleged aggrieved party to follow before bringing an action against a business for an alleged violation of the above-described provisions. The bill would require that party to provide specified notice to the owner of the property, agent, or other responsible party where the alleged violation occurred. The bill would require that owner, agent, or other responsible party to respond within 30 days with a description of the improvements to be made or with a rebuttal to the allegations, as specified. If that

owner, agent, or other responsible party elects to fix the alleged violation, the bill would provide 120 days to do so. The bill would provide that its provisions do not apply to claims for recovery of special damages for an injury in fact, and would authorize the court to consider previous or pending actual damage awards received or prayed for by the alleged aggrieved party for the same or similar injury. The bill would further state the intent of the Legislature to institute certain educational programs related to special access laws.

This bill would declare that it is to take effect immediately as an urgency statute.

~~The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.~~

~~CEQA defines various terms for the purposes of CEQA.~~

~~This bill would make technical, nonsubstantive changes to the term “project” for the purposes of CEQA.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (a) *The federal Americans with Disabilities Act of 1990 (Public*
- 4 *Law 101-336) and this state’s complementary special access laws*
- 5 *set forth in Sections 51, 52, 54, 54.1, and 54.3 of the Civil Code*
- 6 *and Sections 4450 and 4452 of the Government Code are intended*
- 7 *to protect Californians with special needs from unlawful and unfair*
- 8 *restrictions on access to the full and free use of the streets,*
- 9 *highways, sidewalks, walkways, public buildings, medical facilities,*
- 10 *including hospitals, clinics, and physicians’ offices, public*
- 11 *facilities, and other public places.*

1 ***(b) These special access laws are susceptible to abuse through***
2 ***vexatious litigation that is not pursued with the primary intent of***
3 ***rectifying a wrong or advancing or creating a public benefit.***

4 ***(c) Vexatious special access lawsuits unduly burden our courts***
5 ***and taxpayers and do not result in improved access for those with***
6 ***special access needs. Those lawsuits cost California jobs and***
7 ***economic prosperity, unfairly threaten small businesses, force***
8 ***businesses to respond with higher costs for goods and services,***
9 ***and have adverse impacts on levels of employment and employee***
10 ***compensation.***

11 ***(d) It is the intent of the Legislature in enacting this act to***
12 ***eliminate vexatious special access lawsuits while protecting the***
13 ***right of individuals to retain counsel and file an action for relief***
14 ***pursuant to the federal Americans with Disabilities Act of 1990***
15 ***(Public Law 101-336) and Sections 51, 52, 54, 54.1, and 54.3 of***
16 ***the Civil Code and Sections 4450 and 4452 of the Government***
17 ***Code.***

18 ***(e) It is the intent of the Legislature in enacting this act to***
19 ***restrict the filing of special access lawsuits under California law***
20 ***without first notifying and allowing property owners, agents, or***
21 ***other responsible parties the opportunity to improve access by***
22 ***curing any violations.***

23 ***(f) It is not the intent of the Legislature in enacting this act to***
24 ***prohibit the filing of special access lawsuits where, because of an***
25 ***alleged violation of this state's special access laws, an individual***
26 ***has suffered an injury in fact for which a proceeding in a court of***
27 ***competent jurisdiction is proper.***

28 ***SEC. 2. Section 55.4 is added to the Civil Code, to read:***

29 ***55.4. (a) Notwithstanding any other provision of law, prior to***
30 ***filing a claim under Section 51, 52, 54, 54.1, or 54.3, or Section***
31 ***4450 or 4452 of the Government Code, the alleged aggrieved party***
32 ***shall notify the owner of the property, agent, or other responsible***
33 ***party where the alleged violation occurred by personal service,***
34 ***in accordance with applicable state or federal laws, or certified***
35 ***mail, of all alleged special access violations for which a claim***
36 ***may be filed by the alleged aggrieved party. That notice shall***
37 ***contain the following language:***

38
39 ***“This letter is to inform you that the property located at (address***
40 ***of property), for which you are the property owner, agent, or other***

1 responsible party, may be in violation of federal and/or state
2 special access laws pursuant to (expressly cite the federal and/or
3 California statute of which the property is believed to be in
4 violation) and caused harm to (list the name of the alleged
5 aggrieved party).

6 Specifically, the possible violation(s) has/have been identified
7 as follows: (Notice must identify the specific facts that constitute
8 the alleged violation, including the date on which the alleged
9 violation occurred and identification of the location of the alleged
10 violation with sufficient detail, so that the location can be identified
11 by the property owner, agent, or other responsible party).

12 Under Section 55.4 of the California Civil Code, you have 30
13 days to respond to this notice by certified mail or personal service.
14 Your response must be addressed to (give address where personal
15 service may be received or certified mail may be sent). California
16 law allows you to respond in one of three ways:

17 (1) You may expressly state that improvements will be made to
18 bring the premises into compliance with applicable special access
19 laws. If you respond in this fashion, you have a maximum of 120
20 days to make these improvements or repairs. The 120-day period
21 shall begin on the date your response to this notice is received at
22 the address given above. If the improvements or repairs necessary
23 to bring the property into compliance with federal and state special
24 access laws are not completed in 120 days, a lawsuit may be
25 brought against you.

26 (2) You may challenge the validity of the alleged violations. If
27 you respond in this fashion, a lawsuit may be brought against you
28 immediately.

29 (3) If the violations listed above are the same or similar to
30 previous violations that you believe have been corrected, you may
31 respond by stating that the necessary repairs have been made to
32 bring the property into compliance with federal and state special
33 access laws. You must also attach evidence that verifies those
34 improvements.

35 If you have any questions about this notice or your rights under
36 federal or California law, please contact your legal counsel.”
37

38 (b) Beginning with the date of notice, the property owner, agent,
39 or other responsible party where the alleged violation occurred
40 shall have 30 days to respond by certified mail or personal service

1 *to the alleged aggrieved party. That response shall communicate*
2 *any of the following:*

3 *(1) Expressly state that improvements will be made to bring the*
4 *premises into compliance with applicable laws. A response in this*
5 *fashion by the property owner, agent, or other responsible party*
6 *where the alleged violation occurred shall not be considered an*
7 *admission of guilt and is inadmissible in any future claims based*
8 *on the same facts filed against the property owner, agent, or other*
9 *responsible party.*

10 *(2) Challenge the validity of the alleged violation. If the property*
11 *owner, agent, or other responsible party where the alleged*
12 *violation occurred so responds, the alleged aggrieved party may*
13 *file a claim, subject to any applicable statutes of limitations, any*
14 *time after receipt of notice as prescribed in this section.*

15 *(3) State that the alleged violations identified by the alleged*
16 *aggrieved party have been corrected to comply with applicable*
17 *state and federal special access laws. The property owner, agent,*
18 *or other responsible party where the alleged violation occurred*
19 *shall also attach evidence that verifies those improvements.*

20 *(c) If the property owner, agent, or responsible party where the*
21 *alleged violation occurred responds in the manner described in*
22 *paragraph (1) of subdivision (b), the property owner, agent, or*
23 *responsible party where the alleged violation occurred shall have*
24 *120 days to remedy the alleged violation. The 120-day period shall*
25 *begin on the date the alleged aggrieved party receives a response,*
26 *pursuant to subdivision (b), from the owner, agent, or responsible*
27 *party where the alleged violation occurred.*

28 *(d) If, at the end of the 120-day period, the property owner,*
29 *agent, or responsible party where the alleged violation occurred*
30 *has not made the improvements described in paragraph (1) of*
31 *subdivision (b) and fails to provide satisfactory explanation as to*
32 *why those repairs were not yet completed, the alleged aggrieved*
33 *party may file a claim.*

34 *(e) If the property owner, agent, or other responsible party*
35 *where the alleged violation occurred has made the improvements*
36 *described in paragraph (1) of subdivision (b), no current or future*
37 *alleged aggrieved party shall receive any damages or attorney's*
38 *fees, other than special damages, for any claim arising out of the*
39 *same or similar facts that served as a basis for the alleged*
40 *violation.*

1 (f) *This section applies to all claims for damages or fees, other*
2 *than those praying for special damages arising out of injuries in*
3 *fact. This section shall not be construed to limit claims for recovery*
4 *of special damages filed by any person who suffers an injury in*
5 *fact because they were denied full and equal access to an*
6 *accommodation as required by Section 51, 52, 54, 54.1, or 54.3,*
7 *or Section 4450 or 4452 of the Government Code.*

8 (g) *In making a determination of the amount of damages*
9 *awarded to a successful plaintiff, a court or jury shall consider*
10 *previous or pending actual damage awards received or prayed*
11 *for by that plaintiff for the same or similar injury.*

12 SEC. 3. *Section 55.41 is added to the Civil Code, to read:*

13 55.41. *It is the intent of the Legislature to institute programs*
14 *to educate business property owners and local municipalities about*
15 *the accessibility requirements of federal and state special access*
16 *laws.*

17 SEC. 4. *Section 4452 of the Government Code is amended to*
18 *read:*

19 4452. (a) *It is the intent of the Legislature that the building*
20 *standards published in the State Building Standards Code relating*
21 *to access by the physically handicapped and the other regulations*
22 *adopted by the State Architect pursuant to Section 4450 shall be*
23 *used as minimum requirements to insure that buildings, structures*
24 *and related facilities covered by this chapter are accessible to, and*
25 *functional for, the physically handicapped to, through, and within*
26 *their doors, without loss of function, space, or facility where the*
27 *general public is concerned.*

28 (b) *Any unauthorized deviation from ~~such~~ those regulations or*
29 *building standards shall be rectified by full compliance within 90*
30 *days after discovery of the deviation.*

31 (c) *Notwithstanding subdivision (b), prior to any action*
32 *commenced for an alleged violation of Section 4450 or this section,*
33 *the notice requirements specified in Section 55.4 of the Civil Code*
34 *shall apply to the alleged aggrieved party.*

35 SEC. 5. *This act is an urgency statute necessary for the*
36 *immediate preservation of the public peace, health, or safety within*
37 *the meaning of Article IV of the Constitution and shall go into*
38 *immediate effect. The facts constituting the necessity are:*

39 *Small business owners across the state have been hit recently*
40 *with a spate of frivolous and vexatious lawsuits, threatening the*

1 *viability of small businesses. In order to protect small business*
2 *owners and ensure that these lawsuits stop, it is necessary that*
3 *this act take effect immediately.*

4 ~~SECTION 1. Section 21065 of the Public Resources Code is~~
5 ~~amended to read:~~

6 ~~21065. "Project" means an activity that may cause either a~~
7 ~~direct physical change in the environment, or a reasonably~~
8 ~~foreseeable indirect physical change in the environment, and that~~
9 ~~is any of the following:~~

10 ~~(a) An activity directly undertaken by any public agency.~~

11 ~~(b) An activity undertaken by a person who is supported, in~~
12 ~~whole or in part, through contracts, grants, subsidies, loans, or~~
13 ~~other forms of assistance from one or more public agencies.~~

14 ~~(c) An activity that involves the issuance to a person of a lease,~~
15 ~~permit, license, certificate, or other entitlement for use by one or~~
16 ~~more public agencies.~~